

REMARKS

In an Official Action dated September 3, 2004, the Examiner has indicated that restriction to one of the following inventions is required under 35 U.S.C. § 121:

- Group I Claims 1-2, 19, 29 and 40;
- Group II Claims 42-47;
- Group III Claim 48; and
- Group IV Claim 57.

Accordingly, Applicants provisionally elect Group I, the subject matter of Claims 1-2, 19, 29 and 40, with traverse. Applicants submit that the restriction requirement is in error. It is believed that in examining the non-elected claims, the Examiner will search the same classes of art as is required to search the invention of the elected claims, resulting in the same references being cited against both of the aforementioned groups of claims.

Thus, this restriction will not reduce the workload of the U.S. Patent and Trademark Office or simplify prosecution of the application. As set forth in M.P.E.P. Section 803, there are two criteria for a proper restriction requirement between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a **serious burden** on the Examiner if restriction is not required. This portion of the M.P.E.P. requires that if the search and examination of an entire application can be made without serious burden, the Examiner **must**

examine it on the merits, even though it includes claims to distinct or independent inventions.

In paragraph number 4 of the Office Action, the Examiner has indicated that an election of one of the following species of invention is required under 35 U.S.C. §121:

Species A: Claims 3-4, 15-17, 20-21, 30, 41, 49, 55, 57-58, 70-71 and 73-74 directed to frequency conversion;

Species B: Claim 5-10, 22-24, 31-35, 50 and 59-64 directed to couplers;

Species C: Claims 11-12, 25-26, 36-37, 51-52 and 65-66 directed to space diversity;

Species D: Claims 13-14, 27-28, 38-39, 53-54 and [37-39 sic] 67-69 directed to DC regulators; and

Species E: Claims 18, 72, 75 directed to a housing and a housing seal.

Applicants submit that the requirement for an election is in error because the Examiner has identified the different species based on the claims. Per MPEP § 806.04(e), "*Claims are Never Species.*"

Despite this error, Applicants have elected the invention of Group I, claims 1-2, 19, 29 and 40. These claims encompass all claims which depend therefrom. Presently, claims 2-18 depend from elected claim 1, and one or more of these claims are included in each of the Species categories "A" through "E". Claims 20-28 depend from elected claim 19, and one or more of these claims are included in each of the species categories "A" through "D". Claims 30-41 depend from elected claim

29, and one or more of these claims are included in each of the Species categories "A" through "D".

Absent the identification of "specifically different embodiments", as called for by MPEP §806.04(e), Applicants request examination of an embodiment which includes the features encompassed by claims 11-12, 25-26 and 36-37 (Species C) and new claims 76-104.

By the foregoing amendment, claims 42-75 have been canceled. New claims 76-83 correspond to original claims 3-10 but depend from claim 11. New claims 84-89 correspond to original claims 13-18 but depend from claim 11. New claims 90-94 correspond to original claims 20-24 but depend from claim 25. New claims 95-96 correspond to original claims 27-28 but depend from claim 25. New claims 97-102 and 103-104 correspond to original claims 30-35 and 38-39, respectively but depend from claim 36. Thus, claims which read on the elected species are claims 1-2, 11-12, 19, 25-26, 29, 36-37, 40 and 76-104. All of these claims are considered allowable.


Upon allowance of the generic claims, allowance of claims 3-10, 13-18, 20-24, 27-28, 30-35, 38-39 and 41, as being directed to a reasonable number of non-elected species, is also requested.

Accordingly, reconsideration and withdrawal of the aforementioned restriction requirement and species election are respectfully requested. The provisional election is hereby made without prejudice to Applicants' right to file a divisional application or applications should the restriction and election requirements become final.

Respectfully submitted,

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